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FOR USTR G. BLUE AND BENNETT HARMAN AND FOR STATE EB/MTA/MST

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SUBJECT: ECUADOR 2005 NATIONAL TRADE ESTIMATE REPORT
SUBMISSION

REF: STATE 240980

1. Below is Embassy Quito's submission for the 2005 National Trade Estimate Report. A copy of the report has been provided to USTR Bennett Harman via email. The report was a collaborative effort between State, the Commercial Service and the Foreign Agricultural Service.

TRADE SUMMARY

According to US Bureau of Census statistics, the United States, trade deficit with Ecuador was \$1.3 billion in 2003 (agricultural trade accounted for \$850 million of the deficit). That was an increase of \$762 million from the \$538 million deficit in 2002. U.S. goods exports in 2003 were \$1.4 billion, down 9.9 percent from the previous year (\$1.6 billion). Corresponding U.S. imports from Ecuador in 2003 were \$2.7 billion, up 27 percent. U.S. agricultural imports from Ecuador in 2003 were \$1.09 billion, a 4% increase from 2002 (\$970 million). Ecuador is currently the 51st largest export market for U.S. goods.

Ecuadorian Central Bank statistics estimate the stock of foreign direct investment (FDI) in Ecuador in 2003 was \$1.5 billion. U.S. FDI in Ecuador in 2003 is estimated at \$204 million, primarily in the oil sector.

Free Trade Area Negotiations

In November 2003, the United States announced its intention to begin free trade negotiations with Colombia, Peru, Ecuador and Bolivia, the four Andean Trade Preference Act beneficiary countries. The negotiations began on May 18, 2004 with Colombia, Ecuador and Peru. The Andeans collectively represent a market of about \$7.1 billion for U.S. exports in 2003, and are home to about \$4.2 billion in U.S. FDI. The negotiation will complement the goal of completing a Free Trade Area of the Americas (FTAA).

IMPORT POLICIES

1A. Tariffs

When Ecuador joined the WTO in January 1996, it bound most of its tariff rates at 30 percent or less. Ecuador's average applied tariff rate is 13 percent. Ecuador applies a four-tiered structure with levels of five percent for most raw materials and capital goods, 10 percent or 15 percent for intermediate goods, and 20 percent for most consumer goods. A small number of products, including planting seeds, are subject to a tariff rate of zero. Some agricultural products (193), most of which are chemicals and veterinary products, are imported duty free.

As a member of the Andean Community of Nations (CAN), Ecuador grants and receives exemptions on tariffs (e.g., reduced ad valorem tariffs and no application of the Andean Price Band System) for products from the CAN countries (Bolivia, Colombia, Ecuador, Peru and Venezuela). Currently, these countries have an Andean Free Trade Zone and apply Common External Tariffs (CET), as stated in CAN Decision 370. There is a proposal for a new CET, with a three-tiered structure, with levels of 5, 10 and 20 percent tariffs for agricultural products. The proposed structure has not been approved by the CAN.

Ecuador maintains the Andean Price Band System (APBS) on 153 agricultural products (13 [marker8](#) and 140 [linked8](#) products) imported from outside the CAN. The 13 [marker8](#) products are wheat, rice, sugar, barley, white and yellow corn, soybean, soybean meal, African palm oil, soy oil, chicken meat, pork meat and powder milk. Under this system, the ad valorem CET are adjusted (increased or reduced) according to the relationship between international reference prices, established floor and ceiling prices and the importation price of the commodity. Upon accession to the WTO, Ecuador bound its ad valorem tariffs (including the additional levy from the APBS) for these commodities between 31.5 and 85.5%.

As part of its WTO accession, Ecuador committed to phase out its WTO-authorized price band system, starting in January 1996 with a total phase out by December 2001. No steps have been taken to comply with this commitment. Instead, Ecuador adopted the APBS, which applies the reduced CET to the CAN and increased tariffs to other WTO members. This decision did not comply with Ecuador's commitments to the WTO. However, Ecuador maintains that, as the highest rate under the APBS is beneath the bound tariff rate, Ecuador's participation in the APBS is WTO-consistent.

1B. Non-Tariff Measures

Ecuador has failed to eliminate several non-tariff barriers since its WTO accession. Importers must register with the Central Bank, through approved banking institutions to obtain an import license. In order to get this license, an importer must first obtain, inter alia, a tax registration number from Ecuador's Internal Revenue Service (SRI). Ecuador requires prior authorization from various government agencies, e.g., the Ministry of Agriculture (MAG) for importation of most commodities, seeds, animals, and plants. Also, the Ministry of Health must give its prior authorization (i.e., sanitary registration) before the importation of processed, canned, and packed foods as well as food ingredients and beverages, cosmetics and pharmaceutical products. Another administrative hurdle agricultural importers must overcome is the MAG's use of Consultative Committees⁸ (Committees). The Committees, mainly composed of local producers, often advise the MAG against granting import permits to foreign suppliers. The MAG often requires that all local production be purchased at high prices before authorizing imports.

Ecuador also continues to maintain a preshipment inspection (PSI) regime. Preshipment inspection by an authorized inspection company (both before shipment and after specific export documentation has been completed at the intended destination) results in delays far exceeding the time saved in customs clearance. Customs authorities sometimes perform spot-checks, causing further delays. These practices generally add six to eight weeks to shipping times. The following imports are exempt from verification: imports below FOB \$4000, arms and defense materials, newspapers and printed material, traveler's personal effects, donation to the public sector, imports by diplomatic missions, imports by the public sector that are financed by international loans, imports of gas, fuel, equipment made by the state oil company, imports destined for temporary entry, coffins and samples with no commercial value.

Ecuador maintains bans on the import of used motor vehicles, tires, and clothing. Ecuador applies a 27 percent markup on imported distilled spirits for excise tax purposes. As excise taxes on imports are calculated on CIF value plus import duties, the effective rate is higher for imports than domestic products. Ecuador has not equalized the application of excise taxes between imported and domestic products.

In December 1999, the MAG, through the Ecuadorian Animal and Plant Health Inspection Service (SESA), issued a requirement that all importers must present a certificate stating that imported agricultural products (plants, animals, their products or byproducts) have not been produced using modern biotechnology. In November 2002, the President issued Executive Decree 3399 creating the National Commission for Biosafety as an office of the Ministry of Environment. It will be responsible for biotechnology-related products and regulations issues. However, no rules have yet been enacted.

STANDARDS, TESTING, LABELING AND CERTIFICATION

National standards are set by the Ecuadorian Norms Institute (INEN) of the Ministry of Commerce and generally follow international standards. SESA (an agency of the Ministry of Agriculture) is responsible for administering Ecuador's sanitary and phytosanitary controls. According to Ecuadorian importers, bureaucratic procedures required to obtain clearance still appear to discriminate against foreign products. Ecuador must comply with the WTO Agreement on the Application of Sanitary and Phytosanitary (SPS) Measures, yet denials of SPS certification often appear to lack a scientific basis and to have been used in a discriminatory fashion to block the import of U.S. products that compete with Ecuadorian production. This occurs most often with poultry, turkey and pork meats, beef, dairy products and fresh fruit. The ability to import some products, such as rice, corn, soybeans, and soybean meal depends entirely on the discretion of the MAG, which will often look to the Consultative Committees for direction. SESA follows the Andean Sanitary Standards⁸ established under the Andean Community of Nations (CAN). Some standards applicable for third countries are different from those applied to CAN members. For example, there can be

differences in the requirements for CAN and third countries for the importation of live animals, animal products, and plants and plant by-products. SESA also requires certifications for each product stating that the product complies with risk analysis and that the country of origin or the area of production is free from certain exotic plant or animal diseases.

Sanitary registrations are required for imported as well as domestic processed food, cosmetics, pesticides, pharmaceuticals, and syringes, as well as some other consumer goods. However, in a side agreement to its WTO Accession Agreement, Ecuador committed to accept the U.S. Certificate of Free Sale authorized by the U.S. Food and Drug Administration, instead of the Government of Ecuador's Sanitary Registration. In August 2000, the Government of Ecuador passed a law (Ley de Promocion Social y Participacion Ciudadana, Segunda Parte) also known as Trolley II) followed by application rules issued in June 2001 to reform the issuance of sanitary permits for food products. This is a step towards modernizing the issuance of sanitary registrations with new regulations that allow the acceptance of free sale certificates, require that the government issue sanitary permits within 30 days of the receipt of the request, and reduce the number of documents required to obtain a permit. However, these regulations are not being applied consistently. U.S. firms report that the Izquierda Perez National Hygiene Institute (INHIP - the agency responsible for registering imported processed food products) office in Guayaquil has refused to accept U.S. Certificates of Free Sale and continues to apply the old regime for sanitary permits. In addition, non-transparent bureaucratic procedures and inefficiency have delayed issuance beyond 30 days and in some cases blocked the entry of some imported products from the United States.

U.S. companies have expressed concerns regarding regulations issued by Ecuador's public health ministry requiring foreign food manufacturers to disclose confidential information such as formulas of imported food and pharmaceutical products. This requirement appears to go beyond the requirements of the Codex Alimentarius Commission on International Standards and Labeling.

GOVERNMENT PROCUREMENT

Government procurement is regulated by the 1990 public contracting law. Foreign bidders must be legally represented in Ecuador. There is no legal requirement to discriminate against U.S. or other foreign suppliers. Bidding for government contracts can be cumbersome and insufficiently transparent. Ecuador is not a signatory to the WTO Agreement on Government Procurement.

EXPORT SUBSIDIES

Ecuador has created a semi-independent agency, the Corporation for the Promotion of Exports and Investments (Corpei), to promote Ecuadorian exports. Using a European Union loan, Corpei offers matching grants to exporters to help fund certain expenses, including international promotional events and export certifications. The individual grant amount varies according to the project.

INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION

In 1998, Ecuador enacted a comprehensive law that significantly improved the legal basis for protecting intellectual property, including patents, trademarks, and copyrights. The intellectual property law provides greater protection for intellectual property; however, it is deficient in a number of areas and the law is not being adequately enforced. Enforcement of copyrights remains a significant problem, especially concerning sound recordings, computer software, and motion pictures. Ecuador's current intellectual property regime is provided for under its intellectual property rights (IPR) law and Andean Pact Decisions 486, 345, and 351. Ecuador is a member of the World Intellectual Property Organization (WIPO) and is a member of the WIPO Copyright Treaty and the WIPO Performances and Phonograms Treaty. Furthermore, Ecuador has ratified the Berne Convention for the Protection of Literary and Artistic Works, the Geneva Phonograms Convention, the Paris Convention for the Protection of Industrial Property, and the WIPO Patent Cooperation Treaty.

1A. Copyrights

The Government of Ecuador, through the National Copyright Office's Strategic Plan against Piracy, has committed to take action to reduce the levels of copyright piracy, including implementation and enforcement of its 1998 Copyright Law. Article 78 of the 1999 Law on Higher

Education appears to permit software copyright violations by educational institutions.

B. Patents and Trademarks

Ecuador's 1998 IPR law provided an improved legal basis for protecting patents, trademarks, and trade secrets. However, concerns remain regarding several provisions, including a working requirement for patents, compulsory licensing, and the lack of enforcement in the protection of test data.

Government of Ecuador health authorities continued to approve the commercialization of new drugs which were the bioequivalents of already approved drugs, thereby denying the originator companies the exclusive use of their data. In effect, the Government of Ecuador is allowing the test data of registered drugs from originator companies to be used by others seeking approval for their own pirate version of the same product. Also, U.S. companies are concerned that the Government of Ecuador is implementing a policy that a company that had patented a compound for one use cannot subsequently patent a second use of that compound. This puts Ecuador at odds with international norms.

C. Enforcement

There continues to be an active local trade in pirated audio and video recordings, computer software, and counterfeit brand name apparel. The International Intellectual Property Alliance estimates that piracy levels in Ecuador for both motion pictures and recorded music has reached 95 percent, with estimated damage due to music piracy of \$50-60 million. At times, judges in IPR cases, before issuing a preliminary injunction, demand a guaranty and evidentiary requirements that exceed legal requirements and in effect limit the ability of rights holders to enforce their rights. The national police and the customs service are responsible for carrying out IPR enforcement but do not always enforce court orders. Some local pharmaceutical companies produce or import pirated drugs and have sought to block improvements in patent protection. U.S. industry estimates damage due to the failure to provide data exclusivity is at least \$5 million.

SERVICES BARRIERS -----

Ecuador has ratified the WTO Agreement on Financial Services. The 1993 Equity Markets Law and the 1994 General Financial Institutions Law significantly opened markets in financial services and provided for national treatment. Foreign professionals are subject to national licensing legislation, and the Superintendent of Banks must certify accountants.

In the area of basic telecommunications, Ecuador only subscribed to WTO commitments for domestic cellular services. It did not make market access or national treatment commitments for a range of other domestic and international telecommunications services, such as voice telephony and data. In addition, Ecuador did not adhere to the pro-competitive regulatory commitments of the WTO Reference Paper. Several U.S. telecommunications companies have had their international circuits disconnected without proper notice of alleged infractions. The Government has also used Ecuadorian courts to delay implementation of an arbitral award in favor of a U.S. company.

INVESTMENT BARRIERS -----

Ecuador's foreign investment policy is governed largely by the national implementing legislation for Andean Pact Decisions 291 of 1991 and 292 of 1993. Foreign investors are accorded the same rights of establishment as Ecuadorian private investors, may own up to 100 percent of enterprises in most sectors without prior government approval, and face the same tax regime. There are no controls or limits on transfers of profits or capital. The U.S.-Ecuador Bilateral Investment Treaty (BIT) entered into force in May 1997 and includes guarantees regarding national and most-favored-nation treatment, prompt, adequate and effective compensation for expropriation, freedom to make financial transfers, and access to international arbitration. U.S. companies are sometimes reluctant to resolve commercial disputes through the Ecuadorian legal system, fearing a prolonged process and a lack of impartiality.

Certain sectors of Ecuador's economy are reserved to the state. All foreign investment in petroleum exploration and development in Ecuador must be carried out under contract with the state oil company. U.S. and other foreign oil companies produce oil in Ecuador under such contracts. Several of these companies are involved in a dispute with the government of Ecuador regarding the refund of value-added tax rebates. In 2004, one U.S. company won a \$75 million international arbitration award against the government of Ecuador regarding this dispute. The Government has requested a judicial review of the arbitration award. After notice of

the award, Ecuador,s Solicitor General (Procurador General) initiated an investigation of the company and has since advocated the nullification of the company,s contract and seizure of the company,s considerable assets in Ecuador.

Foreign investment in domestic fishing operations, with exceptions, is limited to 49 percent of equity. Foreign companies cannot own more than 25 percent equity in broadcast stations. Foreigners are prohibited from owning land on the frontier or coast.

Appropriate compensation for expropriation is provided for in Ecuadorian law but is often difficult to obtain. The extent to which foreign and domestic investors receive prompt, adequate, and effective compensation varies widely. It can be difficult to enforce property and concession rights, particularly in the agriculture, oil and mining sectors. Foreign oil, energy, and telecommunications companies, among others, have often had difficulties resolving contract issues with state or local partners. Several U.S. companies have also raised concerns about the lack of transparency, predictability, and stability in Ecuador,s legal and regulatory regime, which increases the risks and adds to the cost of doing business in Ecuador.

ELECTRONIC COMMERCE

Ecuador passed an electronic commerce law in April 2002 that makes the use of electronic signatures in business transactions on the Internet legally binding and makes digital theft a crime. Ecuador has initiated a program for e-government services and universal access to information technology through funding from international financial institutions.

KENNEY